

SHELL OIL CO.

IBLA 83-990

Decided April 20, 1984

Appeal from decision of the Acting Director, Minerals Management Service, denying request to require republication of changes in continental offshore stratigraphic test well program.

Affirmed.

1. Outer Continental Shelf Lands Act: Geological and Geophysical Exploration: Generally

Under 30 CFR 251.6-3(d), the Director of the Minerals Management Service will require republication of an exploratory test drilling application and a period for other persons to join in a venture as original participants without penalty where the applicant proposes changes to the original application and the Director determines that those changes are significant. Deepening of a test well in an attempt to achieve the recognized goal of penetrating a particular geological zone was an anticipated event which was properly determined not to be significant within the meaning of 30 CFR 251.6-3(d).

APPEARANCES: D. Warren Hoff, Esq., Houston, Texas, for Shell Oil Company; Antoinette Tadolini, Esq., Anchorage, Alaska, for ARCO Alaska, Inc.; L. Poe Leggette, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On August 31, 1982, in Shell Oil Co., 66 IBLA 397 (1982), this Board affirmed the decision of the Director, Geological Survey, 1/ which denied

1/ By Secretarial Order No. 3071, dated Jan. 19, 1982, the Secretary of the Interior established the Minerals Management Service (MMS) and transferred to MMS the minerals-related functions of the Conservation Division of the Geological Survey. 47 FR 4751 (Feb. 2, 1982). References to Geological Survey in 30 CFR 251 and other Departmental regulations were changed to MMS by final rule on June 30, 1982. 47 FR 28368. Subsequently, the Secretary transferred certain functions of MMS, not involved herein, to the Bureau of Land Management. Secretarial Order No. 3087, dated Dec. 2, 1982, as amended, Feb. 7, 1983. 48 FR 8982 (Mar. 2, 1983).

Shell Oil Company's (Shell) request to participate as an original participant in ARCO Alaska, Inc.'s (ARCO) continental offshore stratigraphic test (COST) well program in the Bering Sea off the west coast of Alaska. 2/ The program involved the drilling of three COST wells, the St. George Well No. 2, the North Aleutian Shelf Well No. 1, and the Navarin Basin Well No. 1. The Board rejected Shell's arguments that proposed changes to the Department of the Interior's announced Outer Continental Shelf leasing schedule or proposed changes to regulations governing test well drilling were significant changes within the meaning of 30 CFR 251.6-3(d). 3/

Shell subsequently sought to have the Secretary of the Interior take jurisdiction of the case pursuant to 43 CFR 4.5 and overturn the Board's decision. By letter dated January 10, 1983, the Secretary informed Shell that he was declining to do so. Shell did not seek judicial review of the Board's determination.

On June 10, 1983, Shell filed a request with the Director, MMS, seeking to require republication of changes in the COST well program pursuant to 30 CFR 251.6-3(d), thus allowing Shell the opportunity to participate in the program as an original participant. In its request Shell specifically charged that two amendments to ARCO's application for permit to drill the North Aleutian Shelf well were changes which the Director should have determined were significant within the meaning of the regulation. The amendments were for the purpose of allowing deeper drilling. 4/ Shell charged that, because the COST wells were presented as a package, republication should extend to the entire program so that it and others could join all the wells as original participants. 5/

On July 15, 1983, the Acting Director, MMS, found that the changes cited by Shell were insignificant and denied its request. The Acting Director stated at pages 4-5:

2/ The prior history of ARCO's COST well program and Shell's attempts to participate as an original participant without payment of a penalty for joining the program late were set forth in Shell Oil Co., supra. As we noted in that decision, 17 companies joined ARCO as original participants; Shell did not. 3/ 30 CFR 251.6-3(d) provides: "If the applicant proposes changes to the original application [for a permit for exploratory test drilling] and the Director determines that such changes are significant, the Director shall require a republication of the changes and an additional 30 days for other persons to join as original participants."

4/ ARCO's initial application stated that the depth of the North Aleutian Shelf well would be 13,000 feet. A second application was filed without changing the well depth; however, subsequent amendments adjusted the depth to allow drilling first to 16,500 feet and then to 18,000 feet. The total depth actually drilled was 17,155 feet.

5/ Shell stated in its request, at pages 2-3, "Once the program is renoticed, Shell should recover the late participation penalty paid on the St. George and North Aleutian wells or have such sums credited against its participation in the Navarin well, which is being drilled."

In a frontier area, an explorer initially estimates how deeply he wants to drill by using seismic information only. In other words, the explorer interprets this information to find the most promising location and depth for the well. It is common, however, for the interpretation to be wrong. And as the well is drilled, the explorer learns that he must drill deeper to reach the goal. The companies joining ARCO in this venture knew that any of the wells might need to be deepened to reach the venture's goal. So, as a general proposition, proposals to deepen a test well in a frontier area are rarely likely to be significant under 30 CFR 251.6-3(d). Furthermore, Shell has presented no evidence that the proposed depth of this well was a significant factor in any company's decision not to join ARCO's program. Shell's documents show it was not a factor in Shell's decision.

Subsequently, Shell filed this appeal. Both ARCO and MMS have filed responses arguing for affirmation of the Acting Director's decision.

On appeal Shell argues that the deepening of the North Aleutian Shelf well was, in fact, significant under 30 CFR 251.6-3(d). It states that the issue is not whether it would have joined had it known the eventual depth of the well, although it alleges that such would give credence to the significance of the change, rather it is whether the change is significant from the standpoint of cost and geological information to be obtained. Shell cites the degree of deviation from the original plan as a factor in determining significance. Shell states that in this case the deepening was "some 32%" of the original proposed well depth. Shell also argues that the change was significant because approval to drill to a greater depth required the approval of the Management Committee created by Article IV of the Bering Sea Multi-COST Well Agreement, instead of being left exclusively to the discretion of the operator.

In addition, Shell questions whether ARCO's COST well program comports with the regulations which, Shell asserts, "speak in terms of a singular well being allowed in each COST program" (Statement of Reasons at 5). Shell contends that ARCO should have been required to provide notice of each well separately. Shell's solution to this perceived problem is to allow it to join the program as an original participant.

[1] We find no merit to Shell's contentions. Although Shell would have significance gauged from the standpoint of cost and geologic information to be obtained, MMS correctly points out that the purpose of the regulations governing participation is to encourage early commitment to drilling programs and protect those who are willing from the outset to assume the risks. Thus, MMS reasons, the Acting Director properly focused his analysis in part on whether well depth had been a factor in any company's decision not to participate originally. We find such an approach appropriate in this case.

MMS further explained that the Acting Director also reviewed the nature of the venture and determined the deepening of the well was not an unforeseen circumstance given the goal of the program.

Because of the lack of any regulatory guidelines for determining significance, it is clear that the Acting Director adopted the proper approach of considering the policies behind the regulations. The regulations attempt to protect the early risk-takers, yet they are also designed to allow subsequent participation where the applicant alters the plan, as originally published. The regulations provide that the opportunity need only be extended, however, when the proposed change is significant.

In support of the Acting Director's determination of insignificance, MMS has, on appeal, provided the affidavit of David M. Hite, ARCO's Province Exploration Manager for the Bering Sea Province (Exh. B to MMS' Answer). Hite explained that he was responsible for ARCO's recommendation that the North Aleutian Shelf COST well be deepened (Exh. B at 1). He stated that the site and projected depth of a COST well are selected with the primary objective being penetration of a designated sequence of rocks of a certain presumed age. He noted that in an unexplored area it is virtually impossible to predict precisely from seismic data the depth of a sequence of rocks. In his opinion companies joining a COST well program are more concerned with the sequence of rocks being designated as the goal than with the proposed depth of a well, and that they anticipate that the depth of the well may very well vary (Exh. B at 2). Hite described the goal of the program as follows:

6. In the No. Aleutian Shelf No. 1 COST Well, the goal was to penetrate 2000' past the Tertiary section of rocks into the Mesozoic section of rocks. The selection of this objective was based on the theory that the Tertiary section of rocks (approximately 65 million years old) is the primary objective in the Bering Sea believed to contain hydrocarbons. The reason for penetrating 2000' into the Mesozoic rocks below the Tertiary section was that the Mesozoic is the source of the oil in Cook Inlet. Thus, the objective was to penetrate the zone which is the primary objective in the Bering Sea and the zone which may be source rock for hydrocarbons. The plan is to obtain as much information as possible.

(Exh. B at 3).

He then explained the reason for the deepening:

9. As the No. Aleutian Shelf No. 1 COST Well was being drilled, it became apparent that the estimated depth of 13,000' would not be adequate to achieve the goal of drilling through the Tertiary and 2000' into the Mesozoic. As the estimated depth was approached, the well was not yet through the Tertiary zone of rock. The participants in the well decided to continue to attempt to achieve the well's objective and drilling was continued past the estimated depth. The well had not yet penetrated through the Tertiary zone into the Mesozoic when ice forced the rig off location when the well was at a depth of 17,155'. Due to the impossibility of precisely locating the depth of the sections of rock

below the earth's surface, the ultimate goal of the venture was not achieved. Regardless of this, much valuable information was achieved. (Exh. B at 4).

The Hite affidavit establishes that, with regard to the goal of the program, deepening of the well was not a significant change.

Shell argues, however, that from the standpoint of cost, it was significant. The increased cost of deeper drilling cannot be denied, and, in fact, such an expense had to be approved by the Management Committee. Shell asserts that that fact supports its argument concerning significance. We do not agree. Increased costs associated with deeper drilling to achieve the established goal of the program cannot be considered in this case as significant changes to the proposed plan. Certainly, any company involving itself in an exploratory program in an unknown area with a goal of penetrating a particular geological zone would reasonably anticipate that deeper drilling might be required at increased costs. This is, in fact, what the Hite affidavit establishes. 6/

In this case, the regulation requires the Director to determine whether a change is significant. At the time of the well deepening no determination was made. Shell subsequently requested that the Director make such a determination. The Acting Director found the change to be insignificant. Shell has failed to show any error in that determination.

A further allegation made by Shell is that ARCO violated the regulations by not providing notice of each well separately. Shell makes this argument at the same time it concedes that program participants were "allowed to join individual wells" (Statement of Reasons at 5). Shell did not raise this issue at the time ARCO announced its proposal in February 1981, nor did it do so when it first sought the opportunity to participate in the original program without penalty. The Board's decision in Shell Oil Co., supra, was the final resolution of that matter.

Shell is barred from raising the separate notice issue in this appeal. Final judgment on the merits precludes a party from relitigating issues which were or could have been raised in the previous action. Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981). Shell argues that changed circumstances allow it to raise the issue. Although there is no question that Shell may request a determination on the significance of a change under

6/ Despite Shell's claim that its argument on increased costs was directed to the decision to go forward with the deepening in the face of increased cost, MMS points out in its answer that Shell is placed in the anomalous position of appearing to argue that had it known the well would be deeper and more expensive to drill, it would have been more likely to join as an original participant.

30 CFR 251.6-3(d) or challenge a ruling of insignificance, such actions by Shell must be limited to issues involving the actual change under scrutiny. Shell may not raise issues relating to notice of the original proposal at this juncture.

Shell has requested oral argument. Oral argument may be granted at the discretion of the Board. 43 CFR 4.25. It would serve no useful purpose in this case. The request is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

